Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
77 South High Street, 9th Floor, Columbus, OH 43215-6136 ✧ Phone: (614) 466-3615
✧ *Internet Web Site:* http://www.lsc.state.oh.us/

BILL: **Sub. S.B. 7** DATE: **May 31, 2007**

STATUS: **As Reported by Senate State & Local Govt. & Veterans Affairs** SPONSOR: **Sen. Grendell**

LOCAL IMPACT STATEMENT REQUIRED: **No — Potential indirect fiscal effects**

CONTENTS: **To implement the recommendations of the Eminent Domain Task Force and enact procedures to protect private property rights**

State Fiscal Highlights

STATE GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Various Agency Funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain

- Allows properties to be taken by eminent domain in certain circumstances, and establishes compensation guidelines for those takings. The new guidelines, which include provisions for compensating property owners, may potentially result in higher costs when eminent domain is invoked.
- The state fiscal effects would be difficult to quantify, although the agency most likely to be affected would be the Department of Transportation, which relies on eminent domain for various construction projects. Whether the bill would add new costs for the Department is uncertain, and would depend on several factors.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
Various Political Subdivisions			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain	Potential increase in compensation costs for properties taken by eminent domain

- Allows properties to be taken by eminent domain in certain circumstances, and establishes compensation guidelines for those takings. The new guidelines, which include provisions for compensation property owners, may potentially result in higher costs when eminent domain is invoked.

Detailed Fiscal Analysis

Provisions of the bill

The bill prohibits public authorities from taking private property for a public use for the purpose of increasing revenues for a public authority. Public authorities may not use the potential revenues as evidence that the property to be taken is blighted. The bill also exempts agricultural lands from being designated as blighted if the land is used for agricultural purposes as defined by section 303.01 or 519.01 of the Revised Code.

If a public agency acquires any real property, it must include a statement of the purpose of the appropriation and indicate that the prior owner possesses a right to repurchase the property if the public agency decides to not use the land for the stated purpose. If the public body is one whose members are appointed, not elected, such as a port authority, for example, the public agency must receive approval from the elected individuals that participate in the appointment of those members to the public agency before proceeding in the taking of any property. If the agency is a nonelected state agency or a state instrumentality such as a university, this approval must be made by the Governor.

The bill also sets restrictions as to what purposes that property claimed by eminent domain may be used. No such property may be used for any private commercial enterprise, economic development, or any other private use unless that property is conveyed or leased to a public utility, a private entity that occupies an incidental area within a publicly owned project, or a private entity that shows a preponderance of evidence that the property is blighted as defined in section 1.08 of the Revised Code. Once a public entity finds an area blighted, it cannot appropriate the property until it adopts a comprehensive development plan, and obtains a resolution from the governing legislative body where applicable. However, before a public agency completes the appropriation of property, it must provide notice of a reasonable public comment period. This notice must be provided in a newspaper of general circulation for two consecutive weeks. Additionally, any public agency taking the property that is not elected by the public must hold at least one public hearing on the proposed taking following the two weeks notice provision above.

Impact on the state and political subdivisions

Some state agencies and local governments may experience a loss of revenues in the future that may have been available were the public agencies permitted to take certain private property through the use of eminent domain. These public agencies may also experience minimal cost increases for the additional notice requirements placed in the bill.

The bill also establishes some compensation requirements for property taken by eminent domain. The bill requires that any public agency compensate property owners for any moving or relocation costs, direct losses of tangible property, reasonable expenses associated with searching for replacement farms or businesses, and reasonable re-establishment costs. Public agencies are also responsible for compensating property owners for "goodwill" costs of the property. These goodwill costs are the calculable benefits that accrue to a business as a result of its location, reputation, and any other circumstances that result in probable retention of old, or acquisition of new, patronage. If the final award of compensation for property exceeds 125% of the public agency's original offer, the court shall enter judgment in favor of the owner for all costs and expenses including attorney's fees, appraisal fees, and all other expenses as specified in section 163.14(B) of the Revised Code.

One state agency certain to be affected, although to what degree is uncertain, is the Department of Transportation. On the local level, the same would hold true for county engineers. In testimony, the Department of Transportation revealed that over the FY 2004-2006 period, of the 4,870 parcels it acquired, eminent domain was invoked for the appropriation of 578 parcels. To what extent the additional steps required by the bill would affect this process, and future highway construction and maintenance costs is uncertain.

Should a public agency take property through eminent domain, the compensation cost requirements set forth in the bill could potentially exceed those that exist in current law, thereby resulting in increased expenditures for the public takings. Overall, the future indirect revenue impact of the bill on the state and local governments would be difficult to quantify, but it is possible that there could be revenue losses in the form of foregone property taxes for local governments, or any sort of revenue resulting from the economic development due to projects that were not undertaken because of the eminent domain restrictions in the bill.

LSC fiscal staff: Terry Steele, Budget Analyst

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